

IN THE UNITED STATES DISTRICT COURT FOR

THE WESTERN DISTRICT OF OKLAHOMA

**FILED**

JUN 04 2012

ROBERT D. DENNIS, CLERK  
U.S. DIST. COURT, WESTERN DIST. OF OKLA.  
BY Yuh DEPUTY

JERRY L. THOMAS,

Petitioner,

vs.

C. CHESTER, WARDEN,

Respondent.

No. CIV-11-1283-W

**ORDER**

On April 10, 2012, United States Magistrate Judge Robert E. Bacharach issued a Report and Recommendation in this matter and recommended that the Court deny the Motion to Dismiss filed by respondent C. Chester, Warden. The parties were advised of their right to object. The matter now comes before the Court the Objection to Report and Recommendation filed by Chester and the reply thereto filed by petitioner Jerry L. Thomas.


"The burden of demonstrating mootness "is a heavy one,"" Rezaq v. Nalley, 2012 WL 1372151 \*5 (10<sup>th</sup> Cir. 2012)(quoting Los Angeles County v. Davis, 440 U.S. 625, 631 (1979)(further quotation omitted)), and the Court finds, upon de novo review of the record, that Chester has failed at this stage "to carry that burden in this case." Id.

The parties have agreed that at this time all of Thomas' missing time credits have been restored. See Doc. 31 at 1. However, Thomas has claimed that restoration of credits was not the only relief he has sought in this proceeding and because questions remain regarding inter alia the viability, if any, of collateral consequences and potential re-prosecution that warrant further consideration, the Court concurs with Magistrate Judge Bacharach's suggested disposition of Chester's request for dismissal.

Accordingly, the Court

- (1) ADOPTS the Report and Recommendation [Doc. 20] issued on April 10, 2012;
- (2) DENIES Chester's Motion to Dismiss [Doc. 15] filed on March 12, 2012; and
- (3) RE-REFERS this matter to Magistrate Judge Bacharach for further proceedings.

ENTERED this 4<sup>th</sup> day of June, 2012.



LEE R. WEST  
UNITED STATES DISTRICT JUDGE